

§ 3201.102

(A) Any FDIC-insured depository institution or FDIC-insured depository institution holding company which has entered into a transaction with the FDIC to purchase some or all of the assets and assume some or all of the liabilities of a failed FDIC-insured depository institution;

(B) Any FDIC-insured depository institution resulting from the transaction described in paragraph (d)(4)(i) of this section and its wholly owned subsidiaries; and

(C) Any branches and the wholly owned subsidiaries of the institutions described in paragraph (d)(4)(i) of this section.

(ii) An assuming entity retains its status as an assuming entity for a period of one year after the failure of the FDIC-insured depository institution.

(5) *Covered employee* means an employee of the Corporation required to file a public or confidential financial disclosure report under 5 CFR part 2634 or 5 CFR part 3202.

(6) *Employee* means an officer or employee, other than a special Government employee, of the Corporation including a member of the Board of Directors appointed under the authority of 12 U.S.C. 1812(a)(1)(C), and a liquidation graded employee. For purposes of 5 CFR part 2635 and §§3201.103 and 3201.104, *employee* includes any individual who, pursuant to a contract or any other arrangement, performs functions or activities of the Corporation, under the direct supervision of an officer or employee of the Corporation.

(7) *Security* includes an interest in debt or equity instruments. The term includes, without limitation, a secured or unsecured bond, debenture, note, securitized assets, commercial paper, and all types of preferred and common stock. The term includes an interest or right in a security, whether current or contingent, a beneficial or legal interest derived from a trust, the right to acquire or dispose of any long or short position, an interest convertible into a security, and an option, right, warrant, put, or call with respect to a security. The term *security* does not include a deposit account.

(8) *State nonmember bank* means any State bank as defined in 12 U.S.C.

1813(e) which is not a member of the Federal Reserve System.

(9) *Subsidiary*, as defined in 12 U.S.C. 1813(w), means any company which is owned or controlled directly or indirectly by another company.

[60 FR 20174, Apr. 25, 1995, as amended at 67 FR 71070, Nov. 29, 2002]

§ 3201.102 Extensions of credit from FDIC-insured depository institutions.

(a) *Credit subject to this section.* The prohibition, disqualification, and retention provisions of this section apply to a current or contingent financial obligation of the employee. For purposes of this section, a current or contingent financial obligation of an employee's spouse or minor child is considered to be an obligation of the employee.

(b) *Prohibition on acceptance of credit from FDIC-insured State nonmember banks applicable to certain high-level officials.* (1) An employee described in paragraph (b)(2) of this section shall not, directly or indirectly, accept or become obligated on an extension of credit from an FDIC-insured State nonmember bank or its subsidiary, except credit extended through the use of a credit card under the same terms and conditions as are offered to the general public.

(2) The prohibition in paragraph (b)(1) of this section applies to:

(i) An employee who is a member of the Board of Directors, an assistant or deputy to the Board of Directors or to an appointed Board member, and a covered employee who is an assistant to such person; and

(ii) The director of a Washington office or of a division, other than the Division of Supervision and Consumer Protection, and a covered employee who holds a position immediately subordinate to such director.

(c) *Prohibition on acceptance of credit from FDIC-insured State nonmember banks for employees assigned to the Division of Supervision and Consumer Protection.* (1) An employee described in paragraph (c)(2) of this section shall not, directly or indirectly, accept or become obligated on an extension of credit

from an FDIC-insured State nonmember bank or from an officer, director, employee, or subsidiary of such bank, except:

(i) For an employee assigned to the Washington office, credit extended through the use of a credit card on the same terms and conditions as are offered to the general public;

(ii) For an employee assigned to a regional or area office, credit extended by an FDIC-insured State nonmember bank headquartered outside the employee's region or area of official assignment through the use of a credit card on the same terms and conditions as are offered to the general public;

(iii) For an employee assigned to a field office, credit extended by an FDIC-insured State nonmember bank headquartered outside the employee's field office of official assignment through the use of a credit card on the same terms and conditions as are offered to the general public; and

(iv) For a field office supervisor and supervisory examiner, credit extended by an FDIC-insured State nonmember bank headquartered outside the field office supervisor's and supervisory examiner's respective official territories of assignment through the use of a credit card on the same terms and conditions as are offered to the general public.

(2) The prohibition in paragraph (c)(1) of this section applies to the Director of the Division of Supervision and Consumer Protection, a covered employee immediately subordinate to the Director of the Division of Supervision and Consumer Protection, and the following employees assigned to the Division of Supervision and Consumer Protection: an Assistant Director, Regional Director, Deputy Regional Director, Assistant Regional Director, examiner, assistant examiner, review examiner, compliance examiner, assistant compliance examiner, and a covered employee.

(3) Upon accepting credit extended by a credit card in accordance with paragraph (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this section, the employee shall be disqualified in accordance with paragraph (f)(1) of this section, and, within 30 days of accepting such credit, shall file with the appropriate director a State-

ment of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions for Retention—Notice of Disqualification.

(d) *Two-year prohibition on acceptance of credit from FDIC-insured depository institutions.* (1) An employee described in paragraph (d)(2) of this section shall not, directly or indirectly, accept or become obligated on an extension of credit from an FDIC-insured depository institution or its subsidiary for a period of two years from the date of the employee's last personal and substantial participation in an audit, resolution, liquidation, supervisory proceeding, or internal agency deliberation affecting that particular institution, its predecessor or successor, or any subsidiary of such institution. This prohibition does not apply to credit obtained through the use of a credit card under the same terms and conditions as are offered to the general public.

(2) The prohibition in paragraph (d)(1) of this section applies to an employee in the Division of Finance, Division of Resolutions and Receiverships, Division of Insurance and Research, Legal Division, or who is a member of a standing committee of the Board of Directors whose official duties include:

(i) Audit of insured depository institutions for deposit insurance assessment purposes;

(ii) Resolution or liquidation of failed or failing insured depository institutions;

(iii) Participation in the supervision of insured depository institutions or enforcement proceedings under the Federal Deposit Insurance Act; or

(iv) Internal agency deliberations affecting a particular insured depository institution, its predecessor or successor, or a subsidiary of such institution.

(e) *Prohibition on acceptance of credit from an assisted or assuming entity for employees of the Division of Resolutions and Receiverships.* (1) An employee described in paragraph (e)(2) of this section shall not, directly or indirectly, accept or become obligated on any extension of credit from an assisted or assuming entity located in the employee's region of official assignment. This prohibition does not apply to credit obtained through the use of a credit card

under the same terms and conditions as are offered to the general public.

(2) The prohibition in paragraph (e)(1) of this section applies to a regional director, deputy regional director, and any other covered employee in the Division of Resolutions and Receiverships assigned to a service center or other field office.

(f) *Employee disqualification.* (1) An employee described in paragraph (c)(2) of this section shall not participate in an examination, audit, visitation, review, or investigation, or other particular matter involving an FDIC-insured depository institution or other person with whom the employee has an outstanding extension of credit.

(2) A covered employee, other than an employee who is described in paragraph (c)(2) of this section, shall not participate in any particular matter involving an FDIC-insured depository institution or other person with whom the employee has an outstanding extension of credit.

(3) Disqualification is not required under paragraph (f)(2) of this section:

(i) If the credit was extended through the use of a credit card on the same terms and conditions as are offered to the general public; or

(ii) When the agency designee, with the concurrence of the appropriate director, has authorized the employee to participate in the matter using the standard set forth in 5 CFR 2635.502(d).

(4) The Comptroller of the Currency and the Director of the Office of Thrift Supervision shall be disqualified from matters pending before the Board of Directors to the same extent as a covered employee subject to paragraph (f)(2) of this section.

(g) *Retention and renegotiation of pre-existing extensions of credit.* (1) Nothing in this section prohibits the retention of a pre-existing extension of credit that an employee would be prohibited from accepting by § 3201.102(b) or (c) if the extension of credit was permitted to be retained under 12 CFR part 336 prior to the adoption of this regulation or if the employee's acceptance of the extension of credit was proper at the time the obligation was incurred, as in the case of an extension of credit incurred prior to commencement of employment or reassignment to another

division or location. Subsequent action affecting the status of the creditor, such as merger, acquisition, or transaction under 12 U.S.C. 1823, does not change the character of an extension of credit that was proper when incurred. An employee who retains a pre-existing extension that he or she would be prohibited from accepting by § 3201.102(b) or (c) shall report the pre-existing extension of credit to the appropriate director or agency designee within 30 days from the following event, as appropriate:

- (i) Adoption of this part;
- (ii) Commencement of employment;
- (iii) Assignment to another division or location; or
- (iv) Action affecting the status of the creditor.

(2) Any renegotiation of a pre-existing extension of credit shall be treated as a new extension of credit that is subject to the prohibitions contained in § 3201.102(b) through (d). An employee may request that an exception be made to the prohibitions to permit renegotiation of a pre-existing extension of credit. Any such request shall be made in writing to the appropriate director and agency designee, or in the case of an employee described in paragraph (b)(2)(i) and (ii) of this section, to the Ethics Counselor, stating:

- (i) The purpose of the renegotiation;
- (ii) The terms and conditions of the original extension of credit;
- (iii) The terms and conditions now available to the general public;
- (iv) The terms and conditions now offered to the employee;
- (v) The action the employee has taken to move the loan to an institution from which an employee would not be prohibited from accepting an extension of credit; and
- (vi) The financial hardship, if any, denial of the request will cause.

(3) After submission of the request, the appropriate director and agency designee, or the Ethics Counselor, may grant the employee's request based upon a written determination that the request is not inconsistent with 5 CFR part 2635 or otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of the misuse of position or

loss of impartiality, or otherwise to ensure confidence in the impartiality and objectivity with which agency programs are administered.

[60 FR 20174, Apr. 25, 1995, as amended at 62 FR 3772, Jan. 27, 1997; 67 FR 71070, Nov. 29, 2002]

§ 3201.103 Prohibitions on ownership of securities of FDIC-insured depository institutions.

(a) *Prohibition on ownership.* Except as permitted by this section, an employee or the spouse or minor child of an employee, shall not acquire, own, or control, directly or indirectly, a security of an FDIC-insured depository institution, or an affiliate of an FDIC-insured depository institution.

(b) *Exception to prohibition for certain interests.* Nothing in this section prohibits an employee, or the spouse or minor child of an employee, from:

(1) Acquiring, owning or controlling the securities of certain publicly traded bank holding companies or their nonbank subsidiaries where the bank holding company is not primarily engaged in banking and either the bank holding company or the bank it holds is exempt under the provisions of the Bank Holding Company Act of 1956 and which are identified as such by the Board of Governors of the Federal Reserve System (a list of exempt institutions can be obtained from the Corporation's Ethics Section);

(2) Acquiring, owning, or controlling the securities of certain nonfinancial savings association holding companies whose principal business is unrelated to the financial services industry and which are identified as such by the Office of Thrift Supervision pursuant to 5 CFR 3101.109(b)(3)(ii) (a list of such institutions can be obtained from the Corporation's Ethics Section);

(3) Retaining a security of an FDIC-insured depository institution or an affiliate of an FDIC-insured depository institution if the security was permitted to be retained by the employee under 12 CFR part 336 prior to the adoption of this regulation, was obtained prior to commencement of employment with the Corporation, or was acquired by a spouse prior to marriage to the employee;

(4) Acquiring, owning, or controlling a security of an FDIC-insured depository institution or the affiliate of an FDIC-insured depository institution where the security was acquired by inheritance, gift, stock split, involuntary stock dividend, merger, acquisition, or other change in corporate ownership, exercise of preemptive right, or otherwise without specific intent to acquire the security, or, by an employee's spouse or minor child as part of a compensation package in connection with his or her employment. This provision permits the retention of any such interest only where:

(i) The employee makes full, written disclosure on FDIC form 2410/07 to the Ethics Counselor within 30 days of commencing employment or acquiring the interest; and

(ii) The employee is disqualified in accordance with 5 CFR part 2635, subpart D, from participating in any particular matter that affects his or her financial interests, or that of his or her spouse or minor child;

(5) Acquiring, owning, or controlling an interest in a publicly traded or publicly available investment fund provided that, upon initial or subsequent investment by the employee (excluding ordinary dividend reinvestment), the fund does not have invested, or indicate in its prospectus the intent to invest, more than 30 percent of its assets in the securities of one or more FDIC-insured depository institutions or FDIC-insured depository institution holding companies and the employee neither exercises control nor has the ability to exercise control over the financial interests held in the fund; or

(6) Using an FDIC-insured depository institution or an affiliate of an FDIC-insured depository institution as custodian or trustee of accounts containing tax-deferred retirement funds.

(c) *Divestiture.* Based upon a determination of substantial conflict under 5 CFR 2635.403(b), the Ethics Counselor may require an employee, or the spouse or minor child of an employee, to divest a security he or she is otherwise authorized to retain under paragraph (b) of this section.

[60 FR 20174, Apr. 25, 1995, as amended at 61 FR 35915, July 9, 1996]